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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Implementation of the Cable
Television Consumer Protection
and Competition Act of 1992

Broadcast Signal Carriage

MM Docket No. 92-259

ORIGINAL
FILE

COMMENTS OF THE NYNEX TELEPHONE COMPANIES

New England Telephone and Telegraph Company and New York Telephone Company (the "NYNEX Telephone Companies" or "NTCs") respectfully submit their Comments in the Commission's Broadcast Signal Carriage docket. The NYNEX Telephone Companies ask the Commission to make clear in the regulations it prescribes that the "must carry" and "retransmission consent" rules do not apply to video dialtone providers.

The "must carry" provisions of the Cable Act of 1992 require "cable operators" to carry a certain number of local commercial television stations and noncommercial stations.¹ These provisions do not apply to video dialtone providers because the FCC has found that a telephone company providing

¹ Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 102 Stat. (1992) ("1992 Cable Act") Section 4.

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video dialtone service is not a "cable operator" as that term is defined in the Cable Act of 1984.²

The "retransmission consent" provisions of the 1992 Cable Act require "cable operators" and "multichannel video programming distributors" to obtain permission from the originating station before retransmitting the station's signal.³ While video dialtone providers are clearly not "cable operators," it is not as clear that they are not "multichannel video programming distributors." The Commission proposes to apply the term, "where there is a differentiation between an entity performing a service delivery function and an entity selling programming that is delivered over the facilities of another," to the entity "directly selling programming and interacting with the public."⁴ The Commission also states that, where there is a chain of distribution to the public potentially involving more than one multichannel video programming distributor, "it would appear consistent with the objectives of the 1992 Act for the obligation involved to insure

² Telephone Company-Cable Television Cross Ownership Rules, Sections 63.54-63.58, Further Notice of Proposed Rulemaking, First Report and Order, And Second Further Notice of Inquiry, 7 FCC Rcd. 300 (1991) (also finding that the programmer/customers of video dialtone providers are not "cable operators"); Telephone Company-Cable Television Cross-Ownership Rules, Sections 63.54-63.58, Memorandum Opinion And Order On Reconsideration, 7 FCC Rcd. 5069 (1992).

³ 1992 Cable Act Section 5.

⁴ In the Matter of Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage issues, MM Docket No. 92-259, Notice of Proposed Rulemaking, November 19, 1992 ("NPRM") ¶ 42.

to the distributor in the chain that interacts directly with the public."⁵

While a video dialtone provider does not select or sell programming, a video dialtone provider may in some circumstances interact with the public.⁶ The Commission should make clear in its rules on retransmission consent that a video dialtone provider's interaction with the public does not make it responsible for obtaining consent for carrying programming subject to the retransmission consent rules. Because video dialtone providers do not select or sell programming, but simply carry programming selected by others, they should not be responsible for obtaining retransmission consent.

Nor should video dialtone providers be liable if their programmer-customers fail to comply with the "must carry" or "retransmission consent" rules. Video dialtone providers do not have the privilege of selecting and selling programming; they are obligated to offer service to all on the same terms and conditions. Thus, video dialtone providers should not bear the responsibilities of one who has the freedom to select and package programming. It is also inappropriate to place video

⁵ Id.

⁶ For example, the video dialtone provider's gateway may introduce the viewer to the programming selection on the video dialtone platform, and the viewer may be billed for the programming by the video dialtone provider.

dialtone providers in a situation where they must "police" their customer/programmers in the area of retransmission consent.⁷

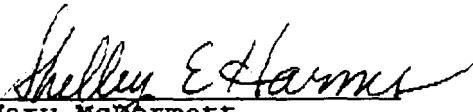
The NYNEX Telephone Companies ask the FCC to make absolutely clear in its rules implementing the "must carry" and "retransmission consent" provisions of the 1992 Cable Act that the rules do not apply to video dialtone providers, and that video dialtone providers are not liable for the failure of their programmer-customers to comply.⁸

Respectfully submitted,

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and

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⁷ Such a requirement would be very difficult, if not impossible, for a video dialtone provider to meet.

⁸ The FCC could use the following language in its rules:

Common carriers, including providers of video dialtone services, are not responsible for complying with these "must carry" and "retransmission consent" rules, nor are they liable if video programmers using their services fail to comply with these rules.